

N.D.A.G. Letter to Tebelius (July 8, 1985)

July 8, 1985

Mr. Mark A. Tebelius
Tebelius Law Firm
Harvey City Attorney
1012 Lincoln Avenue
Harvey, ND 58341

Dear Mr. Tebelius:

Thank you for your letter of June 20, 1985, concerning questions as to the authority to establish a park in a city which has created a municipal park district and whether title to the parks of the city should be transferred to such a district upon its establishment. According to your letter, you have advised the Harvey City Council that the Park District Commissioners have the sole and exclusive authority to establish parks and that title to existing parks should be transferred by the City Council to the Park District.

I am in agreement with your advice to the Harvey City Council on both questions. First, N.D.C.C. Ch. 40-49 is a clear statement by our Legislature providing exclusive authority with respect to the establishment, maintenance, and control of city parks within a city park district where one is so established by the electors of a city. This fact has been restated by our North Dakota Supreme Court in City of Fargo v. Gearey, 156 N.W. 552 (N.D. 1916).

The statutes [establishing a city park district] contemplate a radical change in the distribution of governmental authority. Certain powers are taken from the city council and vested in an elective park commission. . . . It was intended that those cities adopting it should have a park commission with certain sole and exclusive powers incidental and necessary to the acquirement, maintenance, control, and improvement of city parks, boulevards, and ways. . . . It is the corporate agent for the administration of city parks, possessing all the powers expressly granted by statutes and those necessarily implied from those granted. Id. at 553.

It is my opinion that, with respect to a city which has enacted the necessary ordinances establishing a city park district, the sole and exclusive authority to establish parks lies with the park commissioners elected to the park district rather than with the city governing body.

The second question concerns title to the parks following the establishment of a city park district. Enclosed is a copy of a letter sent to the Elgin City Attorney on August 14, 1968, concerning this very subject. As you will note in the letter, there is no specific requirement that title to parks rests with the park district or with the city governing body. There are practical reasons why such title should be found in the name of the park district so as to

clearly illustrate control over the property by that district as opposed to the city governing body.

I agree with this conclusion and would concur with suggestion that title to the property constituting parks be transferred to the park district.

Sincerely,

Nicholas J. Spaeth

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Enclosure